

<b>Title:</b> Immigration Legal Aid: A consultation on new fees for new services  <b>IA No:</b> MoJ026/2022  <b>RPC Reference No:</b> N/A  <b>Lead department or agency:</b> Ministry of Justice  <b>Other departments or agencies:</b> Legal Aid Agency, Home Office	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 03/05/2022			
	<b>Stage:</b> Consultation			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Secondary legislation			
	<b>Contact for enquiries:</b> <a href="mailto:civil.legalaid@justice.gov.uk">civil.legalaid@justice.gov.uk</a>			
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
£-	N/A	N/A	Not a regulatory provision

**What is the problem under consideration? Why is government action or intervention necessary?**  
 Access to legal aid plays a vital role in the immigration system in ensuring access to justice as well as the efficiency of the system as a whole. In recognition of that, the Government are making a number of changes through the Nationality and Borders Act to expand access to legal aid in immigration cases to cover individuals prioritised for removal from the country and to ensure access to advice for individuals on referral into the National Referral Mechanism, which is a framework for identifying and referring potential victims of modern slavery. The Act also makes two other changes to immigration policy which have a direct impact on legal aid provision: the introduction of a new statutory right of appeal in age assessment cases, and a power for the differential treatment of refugees based on criteria set out in Article 31 of the Refugee Convention. Alongside this, there are wider changes in the way immigration legal aid services are being delivered with the introduction of HM Courts & Tribunal Service's (HMCTS) online system for the lodging and processing of appeals. The Ministry of Justice want to ensure the legal aid fee scheme reflects these changes and is therefore consulting on a series of new legal aid fees.

**What are the policy objectives of the action or intervention and the intended effects?**  
 The overarching policy objective behind these proposals is to ensure a fair and equitable fee scheme for immigration and asylum legal aid practitioners, to ensure they are appropriately remunerated for the new work being introduced into the system and the changing way in which they need to work.

- What policy options have been considered, including any alternatives to regulation?**
- Do nothing: No changes are made to how immigration and asylum legal aid is remunerated.
  - Option 1: Introduce new fixed fees for online system appeals with changes to the escape mechanism.
  - Option 2: Remunerate advice provided under a Priority Removal Notice and follow on advice to people subject to a Priority Removal Notice at hourly rates.
  - Option 3: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.
  - Option 4: Remunerate age assessment appeal work at the existing hourly rate payable for Licensed Work in the First-tier Tribunal.
  - Option 5: Remunerate work on the refugee differentiation rebuttal mechanism at hourly rates.
  - Option 6: Implement options 1 to 5 above (preferred option).

**Will the policy be reviewed?** It will not be reviewed.

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)	Traded:		Non-traded:	

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:  Date: .....16.05.2022.....

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce new fixed fees for online system appeals with changes to the escape mechanism.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year N/A	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A
<b>COSTS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Cost (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate	£0m		£0m		£0m
<b>Description and scale of key monetised costs by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>This option is expected to be approximately cost neutral compared to the hourly rates currently being paid.</li> <li>The implementation and ongoing processing costs to the Legal Aid Agency (LAA) are expected to be negligible. However, the assessment of fixed fees are likely to be a saving compared to hourly rates.</li> </ul>					
<b>Other key non-monetised costs by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>N/A</li> </ul>					
<b>BENEFITS (£m)</b>	<b>Total Transition (Constant Price) Years</b>		<b>Average Annual (excl. Transition) (Constant Price)</b>		<b>Total Benefit (Present Value)</b>
Low	N/A		N/A		N/A
High	N/A		N/A		N/A
Best Estimate	£0m		£0m		£0m
<b>Description and scale of key monetised benefits by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>N/A</li> </ul>					
<b>Other key non-monetised benefits by 'main affected groups'</b>					
<ul style="list-style-type: none"> <li>The new fixed fees would provide financial certainty for legal aid providers.</li> </ul>					
<b>Key assumptions/sensitivities/risks</b>					<b>Discount rate</b>
					N/A
<ul style="list-style-type: none"> <li>We have based our fee increase on the results of a survey of legal aid providers, which accords with other management information the LAA holds. Modelling of the escape case changes is based on a forecasted caseload based on 2019-20 data. The true impact of the fixed fee will depend on future caseload and the way that the online system works in practice.</li> </ul>					

## BUSINESS ASSESSMENT (Option 1)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 2

**Description:** Remunerate advice provided under a Priority Removal Notice and follow on advice to people subject to a Priority Removal Notice at hourly rates.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£1.8m	£13.8m
High	-	£5.5m	£41.5m
Best Estimate	-	£4.1m	£30.4m

### Description and scale of key monetised costs by 'main affected groups'

- This option is expected to increase costs of the Legal Aid Fund by £4.1m per year in steady state.
- Implementation and ongoing processing costs to the Legal Aid Agency are expected to be negligible.

### Other key non-monetised costs by 'main affected groups'

- N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	£1.8m	£13.8m
High	-	£5.5m	£41.5m
Best Estimate	-	£4.1m	£30.4m

### Description and scale of key monetised benefits by 'main affected groups'

- Legal aid providers delivering up to seven hours of advice to recipients of a Priority Removal Notice (PRN) would receive an average of £369 per client seen (alongside travel costs). This would amount to an increase in funding for providers of £4.1m.
- Individuals involved in immigration and asylum proceedings who receive PRN advice would gain a benefit equal to the value of the cost paid above, depending on the amount of advice given in individual cases.

### Other key non-monetised benefits by 'main affected groups'

- N/A

### Key assumptions/sensitivities/risks

Discount rate

3.5%

- We have assumed that 11,000 people would receive a PRN from the Home Office.
- We assume the additional cost to the Legal Aid Fund is equal to the value of the additional services provided to the client.

## BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 3

**Description:** Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£0.8m	£5.6m
High	-	£2.3m	£16.9m
Best Estimate	-	£1.5m	£11.2m

### Description and scale of key monetised costs by 'main affected groups'

- This option is expected to increase costs of the Legal Aid Fund by £1.5m per year in steady state.

### Other key non-monetised costs by 'main affected groups'

- N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	£0.8m	£5.6m
High	-	£2.3m	£16.9m
Best Estimate	-	£1.5m	£11.2m

### Description and scale of key monetised benefits by 'main affected groups'

- Immigration and asylum legal aid providers and barristers would receive a financial benefit of £1.5m.
- Approximately 20,000 individuals would receive National Referral Mechanism advice of equal worth to the cost above.

### Other key non-monetised benefits by 'main affected groups'

- N/A

### Key assumptions/sensitivities/risks

Discount rate

3.5%

- We assume 20,000 claims for NRM based on half of legal aid asylum cases in previous years.
- We assume the additional cost to the Legal Aid Fund is equal to the value of the additional services provided to the client.

## BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 4

**Description:** Remunerate age assessment appeal work at the existing hourly rate payable for Licensed Work in the First-tier Tribunal.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£0.9m	£6.4m
High	-	£2.6m	£19.1m
Best Estimate	-	£1.7m	£12.7m

### Description and scale of key monetised costs by 'main affected groups'

- This option is expected to increase costs of the Legal Aid Fund by £1.7m per year.

### Other key non-monetised costs by 'main affected groups'

- N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	£0.9m	£6.4m
High	-	£2.6m	£19.1m
Best Estimate	-	£1.7m	£12.7m

### Description and scale of key monetised benefits by 'main affected groups'

- Immigration and asylum legal aid providers and barristers would receive an estimated financial benefit of £1.7m.
- Individuals involved in immigration and asylum proceedings requiring representation within these proceedings would receive a benefit in the form of legal services equal in value to the costs above.

### Other key non-monetised benefits by 'main affected groups'

- N/A

### Key assumptions/sensitivities/risks

Discount rate

3.5%

- We have assumed that there may be 800 new cases which would be eligible for this work.
- We assume the additional cost to the Legal Aid Fund is equal to the value of the additional services provided to the client.

## BUSINESS ASSESSMENT (Option 4)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 5

**Description:** Remunerate work on the refugee differentiation rebuttal mechanism at hourly rates.

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	-	£0.4m	£3.0m
High	-	£1.2m	£9.0m
Best Estimate	-	£0.8m	£6.0m

### Description and scale of key monetised costs by 'main affected groups'

- This option is expected to increase costs of the Legal Aid Fund by £0.7m to £0.9m per year in steady state.

### Other key non-monetised costs by 'main affected groups'

- N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	-	£0.4m	£3.0m
High	-	£1.2m	£9.0m
Best Estimate	-	£0.8m	£6.0m

### Description and scale of key monetised benefits by 'main affected groups'

- Immigration and asylum legal aid providers would receive a financial benefit equal to the cost to the Legal Aid Fund, amounting to £0.7m to £0.9m.

### Other key non-monetised benefits by 'main affected groups'

- Individuals involved in immigration and asylum proceedings needing advice on the rebuttal process would receive a benefit in the form of this legal advice of worth equal to the cost above.

### Key assumptions/sensitivities/risks

Discount rate 3.5%

- Estimated volumes are based on 2019-20 volumes.
- We assume the additional cost to the Legal Aid Fund is equal to the value of the additional services provided to the client.

## BUSINESS ASSESSMENT (Option 5)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Summary: Analysis & Evidence

# Policy Option 6

**Description:** Implement options 1 to 5 above (preferred option).

## FULL ECONOMIC ASSESSMENT

Price Base Year 2022	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	-	£3.8m	£28.8m
High	-	£11.5m	£86.5m
Best Estimate	-	£8.1m	£60.4m

### Description and scale of key monetised costs by 'main affected groups'

- Implementing Options 1 through 5 is expected to increase costs of the Legal Aid Fund of approximately £8.1m per year in steady state.

### Other key non-monetised costs by 'main affected groups'

- N/A

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	-	£3.8m	£28.8m
High	-	£11.5m	£86.5m
Best Estimate	-	£8.1m	£60.4m

### Description and scale of key monetised benefits by 'main affected groups'

- Immigration and asylum legal aid providers are expected to receive a benefit equal to approximately £8.1m.
- Individuals involved in immigration and asylum proceedings would receive advice equal to the following shares of the costs above: £4.1m of advice for a Priority Removal Notice, £1.5m of advice on referral into the National Referral Mechanism, £1.7m of legal services for Age Assessment Appeals, and £0.8m of legal services for the Refugee Differentiation Rebuttal Mechanism.

### Other key non-monetised benefits by 'main affected groups'

- For cases affected by Option 1, immigration and asylum legal aid providers would experience greater certainty in the fee they will receive for each case.

<b>Key assumptions/sensitivities/risks</b>	<b>Discount rate</b>	3.5%
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- We have assumed that volumes will return to those seen in 2019-20. The rate at which volumes return and to what level will have a significant impact on cost.
- We assume the additional cost to the Legal Aid Fund is equal to the value of the additional services provided to the client.

## BUSINESS ASSESSMENT (Option 6)

<b>Direct impact on business (Equivalent Annual) £m:</b>			<b>Score for Business Impact Target (qualifying provisions only) £m:</b>
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Evidence Base

## A. Background

1. Access to legal aid plays a vital role in the immigration system in ensuring access to justice as well as the efficiency of the system as a whole. In recognition of that, the Government is making a number of changes through the Nationality and Borders Act to expand access to legal aid in immigration cases to cover individuals prioritised for removal from the country and to ensure access to advice for individuals on referral into the National Referral Mechanism, which is a framework for identifying and referring potential victims of modern slavery.
2. The Act makes two other changes to immigration policy which have a direct impact on legal aid provision: the introduction of a new statutory right of appeal in age assessment cases, and a power for the differential treatment of refugees based on criteria set out in Article 31 of the Refugee Convention.
3. Alongside this, the way in which immigration legal aid services are being delivered is changing. The introduction of the HM Courts and Tribunals Service (HMCTS) online system for the lodging and processing of appeals is changing the way this work is done and it is right that the fees paid reflect these changes.
4. These proposals have been informed by stakeholder engagement and evidence gathering across the sector. This Impact Assessment (IA) supports the public consultation which the Ministry of Justice is running to gather further feedback on these proposals.
5. The legal aid scheme is Government by the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO). LASPO sets out which types of immigration services can be funded by legal aid. This is colloquially known as “in scope” legal aid. For immigration services that are not “in scope”, legal aid funding may still be available via the Exceptional Case Funding Scheme, where an individual can demonstrate that their human rights may be breached.
6. Fees payable for immigration services are set out in the Civil Legal Aid (Remuneration) Regulations 2013 (the Remuneration Regulations). The immigration cases considered in this IA can consist of legal help which is initial advice and assistance (such as for an application for asylum, and under a fixed fee scheme would attract a stage 1 fee) and/or legal representation at the First-tier Tribunal (which under a fixed fee scheme would attract a stage 2 fee).
7. The 2018 Standard Civil Contract and Immigration Specification govern the provision of immigration advice between legal aid providers and the Legal Aid Agency (LAA) who contract for legal aid services on behalf of the Lord Chancellor.

## B. Policy Rationale and Objectives

### Rationale

8. The conventional economic approaches to government intervention are based on efficiency or equity arguments. Governments may consider intervening if there are strong enough failures in the way markets operate (e.g. monopolies overcharging consumers) or there are strong enough failures in existing government interventions (e.g. waste generated by misdirected rules), where the proposed new interventions avoid creating a further set of disproportionate costs and distortions. The government may also intervene for equity



(fairness) and distributional reasons (e.g. to reallocate goods and services to more vulnerable groups in society).

9. The rationale for government intervention in this instance is both equity and efficiency. The legal aid scheme exists to ensure access to the courts and tribunals system is available for individuals on low incomes who have serious legal issues by funding the costs of legal advice and representation by qualified legal aid practitioners. An efficient immigration legal aid system adapts and responds to changes to the immigration system to ensure that legal aid fees reflect the work required of legal aid practitioners to help their clients to access justice.
10. The options described in this IA aim to ensure fair and equitable remuneration for legal aid practitioners as a result of new work and processes being introduced into the immigration system. The proposed changes would also generate efficiencies within the wider immigration system, which aim to ensure that individuals receive access to legal advice at an earlier point in the process.

### **Policy Objectives**

11. The associated policy objective is to ensure that delivering these services continues to be sustainable, ensuring that the efficiencies envisaged by the wider reform of the immigration system can be realised.

### **C. Affected Stakeholder Groups, Organisations and Sectors**

12. The proposals assessed in this IA are expected to directly affect the following groups:

- Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales.
- Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work.
- The Legal Aid Agency (LAA).
- HM Courts and Tribunals Service (HMCTS).
- Home Office.

### **D. Description of Options Considered**

13. To meet the policy objectives, the following options are assessed in this IA:

- **Option 0/do nothing: No changes are made to how immigration and asylum legal aid is remunerated.**
- **Option 1: Introduce new fixed fees for online system appeals with changes to the escape mechanism.**
- **Option 2: Remunerate advice provided under a Priority Removal Notice and follow on advice to people subject to a Priority Removal Notice at hourly rates.**
- **Option 3: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.**
- **Option 4: Remunerate age assessment appeal work at the existing hourly rate payable for Licensed Work in the First-tier Tribunal.**
- **Option 5: Remunerate work on the refugee differentiation rebuttal mechanism at hourly rates.**

- **Option 6: Implement options 1 to 5 above.**

14. The preferred option is Option 6: implement options 1 to 5 together as a package. This would deliver a suite of new immigration and asylum legal aid fees covering all of the new work being brought into the system.
15. All options (except the do nothing option) require amendments to the relevant legal aid contract, which would be undertaken by the LAA. Implementing options 1 and 3 would also require negative secondary legislation.

#### **Option 0: Base case/Do nothing**

16. Under the 'do nothing' or 'base case' the current immigration and asylum legal aid fees would remain unchanged and no new fees would be introduced.
17. Under this option, or an option implementing options 2 to 6, there would be no appropriate fees to remunerate the new work introduced into the system by the Nationality and Borders Act.

#### **Option 1: Introducing new fixed fees for online system appeals with changes to the escape mechanism.**

18. Currently, work done as part of HMCTS's online system for the lodging and processing of appeals to the First-tier Tribunal (Immigration and Asylum Chamber) are remunerated at the interim hourly rates set out in Table 8(ca) (and Table 4(ca) where appropriate) of the Civil Legal Aid (Remuneration) Regulations 2013.
19. Under Option 1, going forward they would be remunerated by a new fixed fee instead. For appeals that do not reach a hearing, this fee would be set at £669 in asylum appeals and £628 in non-asylum immigration appeals. For appeals that do reach a hearing, this fee would be set at £1,009 in asylum appeals and £855 in non-asylum immigration appeals.
20. Alongside these new fixed fees, this option would introduce changes to the escape mechanism. Escape mechanisms in legal aid fixed fee schemes allow high cost cases to be paid their actual costs, as assessed at hourly rates, instead of the fixed fee. This prevents these high cost cases from being paid too little to be economically viable for providers to take on.
21. High cost cases are identified as those where the relevant costs assessed at hourly rates are above a certain threshold which is set as a multiple of the value of the relevant fixed fee. Where a case involves multiple fixed fees then the threshold is calculated in reference to the sum of the fixed fees. Full details of the escape mechanism, as it currently applies to cases not going through the online system, are found in the immigration specification of the 2018 contract. In escape cases at the stage 2 (controlled legal representation) level, providers are able to claim for a case at the hourly rate in Table 8(a) of the Remuneration Regulations if they reach this threshold.
22. Option 1 would introduce new fixed fees and make two changes to the escape mechanism compared to its implementation for cases not using the online procedure: to reduce the escape threshold to two times the relevant fixed fee for the stage 2 element of the case, instead of three times; and also decouple the stage 1 (legal help) and stage 2 (controlled legal representation) claims of a case so that each stage could escape, and be paid at escape rates (hourly rates), separately.

**Option 2: Remunerating advice provided under a Priority Removal Notice and follow on advice to people subject to a Priority Removal Notice at hourly rates.**

23. The Nationality and Borders Act provides a power for the Home Office to issue a Priority Removal Notice (PRN) to an individual who is liable for removal or deportation. The PRN would require the recipient to provide a statement, information or evidence in support of their claim to remain in the UK by a specified deadline. To support the creation of the PRN, this option would make available to recipients of a PRN up to seven hours of legally aided non-means and non-merits tested advice.
24. Remuneration for the maximum of seven hours advice would be payable by hourly rates, at the rates set out in Table 7(d) of the Civil Legal Aid (Remuneration) Regulations 2013. In addition, “follow on work” (other “in scope” or ECF work undertaken for recipients of a PRN) would also be remunerable at the hourly rate relevant to the matter.

**Option 3: Introducing a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.**

25. The Nationality and Borders Act extends the scope of legal aid so that legal aid providers can provide non-means tested advice on referral into the National Referral Mechanism (NRM) alongside advice on immigration matters. The overall purpose of this NRM advice is to facilitate the identification of more victims of trafficking.
26. Under this option, this work would be payable by an additional fee on top of the main immigration and asylum case fee. This would be set at £75, roughly equivalent to an hour and a half of work when taking the existing hourly rates in Table 7(d) of the Civil Legal Aid (Remuneration) Regulations 2013 as a guide.

**Option 4: Remunerating age assessment appeal work at the existing hourly rate payable for Licensed Work in the First-tier Tribunal.**

27. When an individual’s age is in dispute, they are referred to a local authority for a social worker-led age assessment. The local authority will determine the age of that person, and their decision can currently be challenged by judicial review. In these cases, legal aid is available, subject to means and merits criteria being satisfied.
28. The Nationality and Borders Act introduces a new statutory right of appeal for age assessments for individuals who require leave to enter or remain in the UK, but whose age is uncertain. The Nationality and Borders Act will make legal aid, for both advice and assistance and representation at the tribunal and in onwards appeals, available for this new appeal right, subject to means and merits testing. Under Option 4, this work would be remunerated using the existing Licensed Work hourly rates for the First-tier Tribunal, as set out in Table 10(c) of the Civil Legal Aid (Remuneration) Regulations 2013.

**Option 5: Remunerating work on the refugee differentiation rebuttal mechanism at hourly rates.**

29. The Nationality and Borders Act introduces a power for the differential treatment of refugees based on the criteria set out in Article 31 of the Refugee Convention. Those who are granted refugee status and meet the terms of Article 31 (i.e. having come to the UK directly from a country or territory where their life or freedom was threatened and who have presented themselves without delay to the authorities) are likely to be considered Group 1 refugees. Those who have not come directly and instead travelled through a safe third country in which they could reasonably have been expected to claim asylum or did not claim asylum in the UK without delay, may be considered Group 2 refugees.

30. Those in Group 1 and Group 2 may be treated differently and this differential treatment may relate to the length of leave being granted, route to settlement, recourse to public funds, and access to the refugee family reunion route.
31. Where the Home Secretary is minded to place a refugee in Group 2, there would be an opportunity to rebut that grouping. The refugee would be able to submit a statement or evidence in support of their arguments as to why they should be placed in Group 1 instead. Legal aid would remain available to individuals who are seeking to rebut their grouping as part of their asylum claim and this work would initially be remunerated by the hourly rates set out in Table 7(d) of the Civil Legal Aid (Remuneration) Regulations 2013 until sufficient data can be gathered to inform a new fixed fee.

**Option 6: Implement options 1 to 5 above.**

32. Under this option all of options 1 to 5 above would be implemented together, as a package.

## **E. Cost & Benefit Analysis**

33. This IA follows the procedures and criteria set out in the Impact Assessment Guidance and is consistent with the HM Treasury Green Book.
34. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales with the aim of understanding what the overall impact on society might be from the options under consideration. The costs and benefits of each proposal are compared to option 0, the do nothing or 'baseline' case. As the 'baseline' option is compared to itself, the costs and benefits are necessarily zero.
35. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those which are non-monetisable.
36. Where costs and benefits are monetisable, we have estimated the steady state implications of the policy change, as the cases involved are relatively short and so steady state will be reached very quickly. All figures are based on current 2022 prices and include VAT, unless otherwise stated, however most legal aid immigration cases do not attract VAT because the client is not resident in the UK due to the nature of the service being provided so the inclusion of VAT does not have a major impact on the analysis. We have not applied optimism bias in these estimates but we have provided some sensitivity analysis in the Risk and Assumptions section to quantify some uncertainty. We have also not included transitional or implementation costs to the Legal Aid Agency, as these are expected to be negligible.
37. Values over £50,000 are rounded to the nearest £0.1m, while values under this are rounded to the nearest £10,000, apart from specific fee values which are quoted exactly. Volumes have been rounded to the nearest 100. The net present costs in this impact assessment are based on a 10 year appraisal period and assume steady state is reached at the point of implementation.
38. As changes in Legal Aid fee schemes for existing services amount to a transfer of resources between the Legal Aid Fund and providers, it is normal not to calculate a Net Present Cost (NPC). However, as the options in this IA (with the exception of Option 1) will

lead to new funded services being provided, a NPC has been calculated for these changes. However, we have also assumed that the benefit to the client is equal to the cost to the Legal Aid Fund so the Total Net Present Social Value for each option is zero.

### **Option 1: Introduce new fixed fees for online procedure appeals with changes to the escape mechanism**

#### *Methodology*

39. The new fees proposed under this option are based on previous fixed fees which were used prior to the introduction of the online procedure and have been increased by an amount equal to the increased effort required for the online procedure taken from evidence gathered from a survey of legal aid providers. The survey was designed to fill the evidence gaps of LAA administrative data, so we could get an insight into how much extra work the online system was causing. Data from the LAA were consistent with the survey, so we were content to use the survey results to increase the fees accordingly.
40. A separate methodology was used to assess the escape mechanism changes, and this is described in the annex at the end of this impact assessment.

#### *Volumes and Costs*

41. The overall cost of the new fixed fee scheme compared to the interim hourly rates which currently exist is expected to be negligible. This is because the proposed new fixed fees have been increased from the previous fixed fees by the average amount of extra work required for the online procedure, and the proposed changes to the escape mechanism would further increase the overall fees paid by paying more higher cost cases at hourly rates. The escape mechanism proposals would also have distributional impacts on the fees payable for individual cases with the result that more cases are paid closer to their actual costs at hourly rates. The annex at the end of this impact assessment shows the evidence base behind the specific changes to the escape threshold which are being proposed.

### **Costs and Benefits of Option 1**

#### *Monetised Costs and Benefits*

##### *Legal Aid Agency*

42. The overall impact of the fee scheme is expected to be roughly cost neutral.

##### *Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work*

43. The overall impact of the fee scheme is expected to be roughly cost neutral, although there are some distribution impacts shown in the annex to this impact assessment.

#### *Non-monetised Benefits*

##### *Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work*

44. A fixed fee scheme would give additional certainty to providers on what their income will be. In addition, the changes to the escape mechanism would reduce the chance that providers would be underpaid for their work on each case, compared to remaining with the existing escape mechanism for work done not through the online system. This is explored in more detail in the annex to this impact assessment.

## **Option 2: Remunerate advice provided under a Priority Removal Notice and follow on advice to people subject to a Priority Removal Notice at hourly rates**

### *Methodology*

45. This IA estimates the new cost of providing advice for a PRN but not the cost for subsequent follow on work. This is because the PRN would be a new cost to the Legal Aid Fund, whereas the follow-on work may be largely substitution from other parts of the legal aid scheme (that is, it would have been funded under existing rules but would now be classified as follow on work). Although there would be some new follow on work, we have not been able to quantify this.

### *Volumes*

46. The volumes for this work would depend on the number of PRNs issued by the Home Office, and the uptake of legal aid amongst those PRN recipients. For the purposes of this IA we have assumed that 11,000 people per year would receive a PRN and take up legal aid funded advice. In practice, the number of PRNs is likely to be initially lower before ramping up to full capacity and may also depend on external international events.

### *Costs*

47. The cost is based on cases claiming an average of 5 hours of advice plus 75% of cases claiming 4 hours of interpretation and the same proportion claiming 1 hour of travel. For the purposes of creating a unit cost, we have assumed 80% of the work is billed through London offices giving an average cost per case of £369.

## **Costs of Option 2**

### Monetised Costs

#### *Legal Aid Agency*

48. The cost of this option to the Legal Aid Fund, under the assumptions outlined above, is expected to be £4.1m per year in steady state.

## **Benefits of Option 2**

### Monetised Benefits

#### *Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work*

49. Providers will receive a financial benefit of an amount equal to the cost to the Legal Aid Fund, that is expected to be £4.1m per year in steady state.

#### *Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales*

50. Those receiving PRN advice funded by legal aid would receive a benefit of legal advice worth an amount equal to the cost of delivering the service.

### **Option 3: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism**

#### *Methodology*

51. While we have used legal aid data to determine the likely cost for this option, the true cost will be highly dependent on the number of clients who require this advice. We have assumed a future steady state that is based on recovery to volumes similar to those prior to Covid-19.

#### *Volumes*

52. We have assumed that in future steady state there would be around 20,000 claims for the NRM fixed fee per year, based on around half of legal aid funded asylum cases in previous years.

#### *Costs*

53. The cost would be £75 per case. In some cases VAT may be applicable, depending on the residency status of the client, however our best estimate for an effective VAT rate for legal aid funded asylum work is around 2%, so omitting VAT from the calculations below does not change the impact of this provision.

### **Costs of Option 3**

#### *Monetised Costs*

##### *Legal Aid Agency*

54. There would be a cost to the Legal Aid Fund of around £1.5m per year in steady state, taking into account the assumptions above.

### **Benefits of Option 3**

#### *Monetised Benefits*

##### *Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work*

55. Providers will receive a financial benefit equal to the cost to the Legal Aid Fund, which is estimated to be around £1.5m in steady state.

##### *Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales*

56. Those eligible and requiring NRM advice would receive a benefit of legal advice worth an amount equal to the cost to the Legal Aid Fund, which is estimated to be around £1.5m in steady state.

### **Option 4: Remunerate age assessment appeal work at the existing hourly rate payable for Licensed Work in the First-tier Tribunal**

#### *Methodology*

57. The data on which to base the impact of this option is limited, as we cannot distinguish existing age assessment judicial review work funded by legal aid from other judicial reviews

in our data and we do not know whether having appeal rights to the First-tier Tribunal would change overall volumes.

58. In addition, judicial reviews are initially undertaken “at-risk” with most work done prior to the permission stage not funded if permission is not granted and so the costs associated with an average case will be different to those at the First-tier Tribunal where there is no “at-risk” element. We also do not know how much future cases at the First-tier Tribunal are likely to cost as we do not have a good proxy for such work in a similar setting.

59. Taking together both of these uncertainties mean we have not been able to produce a reliable cost for this option. The estimates below are for an illustrative example scenario.

#### *Volumes*

60. For illustrative purposes, based on 2019 figures, we anticipate a baseline of around 800 appealable decisions generated per year will take up legal aid.

#### *Costs*

61. We have assumed that the costs of providing representation for these cases is in line with the overall average cost for existing First-tier Tribunal immigration cases.

### **Costs of Option 4**

#### *Monetised Costs*

##### *Legal Aid Agency*

62. Noting the uncertainty of this approach as described above, this option would lead to a cost to the Legal Aid Fund of around £1.7m per year in steady state.

### **Benefits of Option 4**

#### *Monetised Benefits*

##### *Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work*

63. Providers would receive a financial benefit equal to the cost to the Legal Aid Fund, of around £1.7m per year in steady state.

##### *Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales*

64. Those requiring representation for this kind of proceeding would receive a benefit of legal services worth an amount equivalent to the cost to the Legal Aid Fund, of around £1.7m per year in steady state.

### **Option 5: Remunerate work on the refugee differentiation rebuttal mechanism at hourly rates.**

#### *Methodology*

65. As this would be a new Home Office process, there is uncertainty about how many cases would get legal aid funded advice and how much each case would cost. However, we have made a series of assumptions based on existing legal aid data to illustrate likely costs.



## Volumes

66. We have based our volume estimates of those getting advice on the rebuttal mechanism on an assumed proportion of the number of legal aid asylum cases completing with outcome codes indicating they were granted leave to remain in the UK. We have used 2019-20 volumes, and assume we return to this level in steady state after recovery from the Covid-19 pandemic.

## Costs

67. We have assumed an average of two hours of work at the relevant legal aid hourly rate per case.

### **Costs of Option 5**

#### Monetised Costs

##### *Legal Aid Agency*

68. We estimate this option would cost between £0.7m and £0.9m per year in steady state to the Legal Aid Fund.

### **Benefits of Option 5**

#### Monetised Benefits

##### *Immigration and asylum legal aid providers and barristers doing publicly-funded immigration and asylum work*

69. Providers would receive a financial benefit equal to the cost to the Legal Aid Fund, of between £0.7m and £0.9m per year in steady state.

##### *Individuals involved in immigration and asylum proceedings in the courts and tribunals in England and Wales*

70. Those needing advice on the rebuttal mechanism would receive a benefit of legal advice worth an amount equal to the cost to the Legal Aid Fund, of between £0.7m and £0.9m per year in steady state.

### **Option 6: All of the options 1 to 5 above (preferred option).**

71. Option 6 would be the result of doing options 1 to 5 together, and so the costs and benefits are the same as those set out above when combined. The overall expected cost to the Legal Aid Fund would be £8.1m per year, with an equivalent benefit to practitioners and in-kind benefit to clients.

## **F. Risks and Assumptions**

72. The assumptions used to cost these proposals are described in the methodology paragraphs in the Cost and Benefit Analysis section above. The core risk is concerning future volumes. We have assumed that the legal aid immigration system will return to volumes seen prior to the coronavirus pandemic; however there is a risk that migration could be lower or higher in future as the world adjusts to new ways of living. If volumes are higher, then costs will be higher in proportion with higher volumes. The following sensitivity analysis demonstrates this by considering the different total cost due to some realistic scenarios.

## **Sensitivity Analysis**

### **Option 1: Introduce new fixed fees for online system appeals with changes to the escape mechanism.**

73. We have not conducted sensitivity analysis for option 1 as future volumes would not change our expectation that this policy is overall roughly cost neutral.

### **Option 2: Remunerate advice provided under a Priority Removal Notice and follow on advice to people subject to a Priority Removal Notice at hourly rates.**

74. It is likely that steady state will not be reached immediately for this policy, but rather that volumes will ramp up over time. Therefore we have considered the cost of providing advice for PRNs at a range of lower volumes, as well as a higher volume scenario. We show steady state annual costs here, but these can alternatively be considered as the total cost that would be incurred from providing the volume of cases shown although the cost may be billed in a later period – in this way the table can also be considered the cost of ramping up as the billing delay for this work is likely to be quite short.

<b>Scenario</b>	<b>Volume</b>	<b>Steady State Annual Cost</b>	<b>Net Present Cost</b>
<b>Low ramp up</b>	1,000	£0.4m	N/A
<b>Medium ramp up</b>	5,000	£1.8m	N/A
<b>Main low</b>	8,000	£3.0m	£22.1m
<b>Best estimate</b>	11,000	£4.1m	£30.4m
<b>Main high</b>	15,000	£5.5m	£41.5m

### **Option 3: Introduce a new bolt-on fixed fee for advice on referral into the National Referral Mechanism.**

75. The best estimate for this option is based on around half of legal aid funded asylum cases in previous years. The following table shows how this could vary if actual provision were around 25% as a low scenario, or 75% as a high scenario. These scenarios could also be interpreted as if 50% of cases claim an NRM advice bolt-on fee but overall legal aid asylum volumes are 50% lower or higher.

<b>Scenario</b>	<b>Volume</b>	<b>Steady State Annual Cost</b>	<b>Net Present Cost</b>
<b>Low</b>	10,000	£0.8m	£5.6m
<b>Best estimate</b>	20,000	£1.5m	£11.2m
<b>High</b>	30,000	£2.3m	£16.9m

### **Option 4: Remunerate age assessment appeal work at the existing hourly rate payable for Licensed Work in the First-tier Tribunal.**

76. As noted in the Costs and Benefits Analysis section, the volumes for this proposal are very uncertain and so these costs are illustrative scenarios only. For the low and high scenarios we have varied the central scenario by 50% either way.

Scenario	Volume	Steady State Annual Cost	Net Present Cost
Low	400	£0.9m	£6.4m
Central scenario	800	£1.7m	£12.7m
High	1,200	£2.6m	£19.1m

**Option 5: Remunerate work on the refugee differentiation rebuttal mechanism at hourly rates.**

77. We show two scenarios where overall legal aid cases may decrease or increase by 50% to illustrate the range of costs for this option. The best estimate scenario is the mid-point of the range described in the Costs and Benefits Analysis section.

Scenario	Steady State Annual Cost	Net Present Cost
Low	£0.4m	£3.0m
Best estimate	£0.8m	£6.0m
High	£1.2m	£9.0m

**Option 6: Implement options 1 to 5 above.**

78. The following table shows the overall low and high scenarios by combining those above, and comparing them to the combined cost of the best estimates. The low and high scenarios represent the possibility that all the volumes (and therefore costs) would be at the low or high value which may present a wider range than might be expected in reality since the options relate to different parts of the immigration system and so it is unlikely that all options would be low or high simultaneously – although they may all move with general international migration patterns in general.

Scenario	Steady State Annual Cost	Net Present Cost
Low	£3.8m	£28.8m
Best estimate	£8.1m	£60.4m
High	£11.5m	£86.5m

## G. Wider Impacts

### Equalities

79. The Equalities Impact Assessment can be found on page 28 of the consultation document 'Immigration Legal Aid: A consultation on new fees for new services'.

### Families

80. We have no evidence to suggest that families would be disproportionately adversely affected by the proposal.

### **Impact on small and micro businesses**

81. Immigration and asylum legal aid is provided by businesses of various sizes, and these changes should have a positive impact for all sizes of business.

### **Foreign trade impacts**

82. We do not envisage any foreign trade impacts.

### **Better Regulation**

83. This measure is out of scope of the Small Business Enterprise and Employment Act 2015 and the Ministry of Justice's Business Impact Target.

### **Welsh language**

84. We have considered the implications for Welsh language in the development of these proposals and a Welsh language version of the consultation will be available upon request.

## **H. Monitoring and Evaluation**

85. Following implementation of any option, we will continue to monitor the impact of these changes.

## Annex: Distributional impacts of Option 1

A1. This annex shows the distributional impact of the changes made in option 1, focussing on how the escape mechanism changes how many cases are paid more or less than they would be under hourly rates.

### *Methodology*

A2. Since the effect of an escape mechanism depends on both the fee scheme itself and the underlying distribution of effort required for each case, we have based our assessment of the impact of these changes on a modelled caseload which is based on the reported costs of 2019-20 completed initial asylum cases (that is cases with an outcome code indicating the case has concluded). These cases were completed prior to the introduction of the online system, so we have added an additional amount of cost equal to the average increase in work done as gathered by the survey described in paragraph 39. We then modelled the fees which would be received on each case using the proposed fixed fees with the escape mechanism as described in the 2018 immigration contract specification with the modifications described in paragraph A4 below.

A3. We have not used more recent data as the baseline for assessing the escape mechanism since the case volumes have fallen and the case mix of billed cases has changed with the Covid-19 pandemic. Additionally, more recent closed case data is a mixture of cases billed both under the online system and the previous procedure, and so constructing a single baseline representing a year's worth of billing for future cases would not be possible without more complicated adjustment. We think the baseline we have constructed from 2019-20 caseload plus additional cost to simulate the online system cost is more likely to be reflective of future years' work.

A4. Since the policy is to both reduce the escape threshold for stage 2 cases and to decouple the stage 1 and stage 2 claims so they can escape separately, we have assessed three escape mechanisms:

- *3 times escape multiplier and coupled cases* – this is the previous escape mechanism, where the escape threshold for a case is calculated by three times the sum of all the relevant fixed fees in a case.
- *2 times escape multiplier and coupled cases* – this is a sub-option where the stage 2 escape multiplier is reduced to 2, so the escape threshold would be calculated as 3 times the stage 1 fixed fee for cases with stage 1 only, or 2 times the stage 2 fixed fee for cases with stage 2 only, or the sum of these where the case has stage 1 and 2.
- *2 times escape multiplier and decoupled claims* – this is a sub-option, and the proposed option, where each claim is treated separately instead of being added together as a case. In this case the escape threshold would be calculated as 3 times the stage 1 fixed fee for the stage 1 claims, or 2 times the stage 2 fixed fee for the stage 2 claim.

This allows the different effects of the escape multiplier reduction and the decoupling of claims to be isolated and observed.

A5. To show a distributional analysis of these three different escape mechanisms, using the proposed fixed fees on the baseline of cases described above, we have classified each case into one of the following categories:

- “winning” - those being paid greater than 10% more under the fixed fee scheme than under their reported costs.
- “losing” - those being paid less than 10% below their reported costs by the fixed fee scheme.

- “neutral” – those being paid within 10% of their reported costs by the fixed fee scheme.
- “escape” – cases which escape and are modelled as receiving their reported costs. In the decoupled 2 times escape multiplier option some cases can escape for stage 1 or 2 but receive a fixed fee for the other part of the case, so the escape grouping includes cases which have either stage 1, 2, or both escaping.

A6. We also calculate two estimates of total spend on the fee scheme (excluding disbursements and VAT) which are:

- The estimated total spend of the baseline – this is effectively our best estimate of what would be spent under the fee scheme if the online system had been in place in 2019-20. This demonstrates the effect of each escape mechanism on the cost of the fees paid.
- The difference from reported costs – this shows by how much the estimated total spend of the baseline differs from the baseline reported costs (including the addition of the assumed cost of the online system, as described above). This demonstrates the degree which the overall cost of the fees paid match the reported costs from providers. Reported costs may differ from costs which are assessed by the Legal Aid Agency and generally costs are revised down, so where this column is negative it is likely to be overestimating the true difference between fees payable and the fee which would be paid.

## Results

A7. The model described in this annex was run on both a subset of cases from the baseline which had a stage 2 claim as part of the case as well as the whole baseline described above. Both tables show the same effects of the escape mechanism changes, but from different perspectives.

A8. Table 1 shows the results of the escape mechanism changes on the cases we would be directly affecting, i.e. those with a stage 2 claim. This table excludes cases which have only a stage 1 claim as they are unaffected by any of the options considered.

**Table 1: Distribution of immigration and asylum cases with a stage 2 fixed fee claim**

Sub-option Considered	Case volumes				Estimated total spend	Difference from reported costs
	Winning	Neutral	Losing	Escape		
<i>3 times escape multiplier and coupled cases</i>	28%	26%	38%	8%	£11.6m	-9%
<i>2 times escape multiplier and coupled cases</i>	28%	26%	31%	15%	£12.3m	-3%
<i>2 times escape multiplier and decoupled cases</i>	25%	33%	25%	17%	£12.4m	-2%

A9. Table 2 shows the effect on the whole system. When providers take on a case and do not know at the outset whether it will progress to stage 2, then table 2 may provide more relevant information for providers on the incentive to accept a case.

**Table 2: Distribution of all fixed fee immigration and asylum cases**

Sub-option Considered	Case volumes				Estimated total spend	Difference from reported costs
	Winning	Neutral	Losing	Escape		
<i>3 times escape multiplier and coupled cases</i>	41%	20%	31%	8%	£19.4m	-4%
<i>2 times escape multiplier and coupled cases</i>	41%	20%	30%	10%	£20.1m	-1%
<i>2 times escape multiplier and decoupled cases</i>	38%	26%	25%	10%	£20.2m	0%

### Discussion

- A10. Table 1 shows that the effect of continuing with the previous 3 times escape multiplier is that more cases with stage 2 claims lose than win under the fixed fee scheme, and this may cause the fixed fee scheme to be unattractive to providers where a case has a stage 2 element. Reducing the escape multiplier for stage 2 cases to 2 times effectively moves the cases which are losing the most into escape cases and pays these their actual costs at hourly rates. Table 2 shows the same effect, however, it also shows that despite there being more “winning” cases than “losing” cases, the net effect is still that total spend under the fee scheme is less than reported costs – this is because the “losing” cases are losing by more than the “winning” cases are winning.
- A11. While decoupling the stage 1 and stage 2 fees so they escape separately is more complicated, it has the overall effect of narrowing the distribution so more cases are paid closer to their reported costs. Overall, this is expected to lead to a small increase in income for providers, but more importantly fewer cases would lose out by more than 10% as well as fewer cases winning by more than 10%.
- A12. The estimated spend of the baseline (2019-20 reported costs plus the additional estimated cost of the online system) is around £0.8m more under the proposed escape mechanism than under the previous 3 times coupled escape fee system – this is targeted at cases which are higher value but not quite enough to escape under the previous system. Table 2 shows that the proposed escape mechanism is likely cost neutral for all cases. For cases with a stage 2 claim it is also likely that the proposed escape mechanism is roughly cost neutral since, in using reported costs, we have not taken into account the assessment of these costs and, on average, the assessment process revises bill values down.
- A13. Our conclusion is that changing the escape mechanism to the preferred one considered here would provide a system which is both more likely to be fair on individual cases (i.e. less difference between incurred costs and fee paid) than the previous system and also results in a system where the total incurred costs and total fees paid are roughly the same.